

The Appeals Board finds claimant submitted written claim in a timely fashion pursuant to K.S.A. 44-520a, although on grounds distinguishable from those of the Administrative Law Judge. On November 18, 1992, claimant was injured when a well casing, with four-hundred and seventy-five (475) pounds of pressure behind it, exploded, pinning claimant to the pumping unit. After the pressure was relieved, claimant slid forward, walked a few feet and collapsed. Claimant suffered low back and head injuries as a result of this incident. He was hospitalized overnight and released on November 19, 1992. Shortly thereafter, claimant contacted his insurance company, Rutter-Cline and advised them of the accident. The Rutter-Cline representative, a lady named Mary, advised that she takes care of all claims and that "she would take care of it." The medical bills from this hospitalization were provided to Rutter-Cline and they were paid October 18, 1993. The Form A Employer's Report of Accident, required by K.S.A. 44-557, was not filed until October 4, 1993, well beyond the twenty-eight (28) day statutory limit. Written claim was submitted June 23, 1994.

The Administrative Law Judge, in the Preliminary Hearing, found that the filing of the accident report would serve as written claim in this situation. K.S.A. 44-557(b) states in part:

"Such report or reports shall not be used nor considered as evidence before the director, any administrative law judge, the board or in any court in this state."

The ruling by the Administrative Law Judge that the filing of the accident report constituted written claim contradicts K.S.A. 44-557(b) in this situation.

Claimant did allege in filing his Form E-1, Application for Hearing, that he suffered accidental injury on November 18, 1992, and continuous aggravation thereafter through the current date. The evidence in the record, including claimant's testimony, indicates claimant's back condition and his vision problems grew progressively worse between the accident date and the date he next sought medical treatment in June 1994. The medical report of January 3, 1995, submitted from Dr. E.O. Abay states: "It is medically probable the patient's type of work can cause continued aggravation of his low back strain that resulted from the explosion about a year ago." This uncontradicted medical evidence, coupled with claimant's uncontradicted testimony regarding his progressively worsening condition, convinces the Appeals Board that claimant's injury, while initiated on November 18, 1992, did continue to worsen and was aggravated each and every day during his employment through June 1994, when he sought medical care. As the written claim submitted by claimant and his attorney was within two-hundred (200) days of the alleged date of injury, claimant has satisfied the statutory requirement of K.S.A. 44-520a.

The Appeals Board further finds that claimant's uncontradicted evidence regarding his slowly worsening vision problems supports a finding that these vision problems stem from the initial injury on November 18, 1992. It is significant that claimant did not suffer these problems prior to the date of accident and that claimant's vision problems have progressively worsened since the accident.

The Appeals Board finds claimant has satisfied the burden of establishing his vision problems are related to the accidental injury beginning November 18, 1992, through the present and medical care for same is appropriate.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for medical care by Administrative Law Judge Thomas F. Richardson on November 28, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Harold K. Greenleaf, Liberal, KS
Richard L. Friedeman, Great Bend, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director